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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 704

UNITED STATES OF AMERICA ex Rel. ENG FON SING,

Petitioner,

vs.

BYRON H. UHL, District Director of Immigration and Naturalization at the Port of New York, or Any Other Person Having the Body of Said Eng Fon Sing in Custody.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Of Counsel.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petitioner, Eng Fon Sing, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Second Circuit entered in the above cause on the 16th day of July, 1941, affirming an order entered in the District Court of the United States for the Southern District of New York dated the 15th day of July, 1940, dismissing a writ of habeas corpus obtained by your petitioner and remanding your petitioner to the custody of the District Director of Immigration and Naturalization at the Port of New York for deportation.

Your petitioner respectfully represents:

That the issues raised by the return to the writ of habeas corpus were duly submitted to the District Court and resulted in the dismissal of the writ, as aforesaid. The opinion of the District Court is set forth on pages 71-75 of the record on appeal to the United States Circuit Court. An appeal from said order was affirmed by the United States Circuit Court of Appeals as appears by the *Per Curiam* opinion on page 90 of the record on appeal.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 240, Subdivision (a) of the Judicial Code, as amended by the Act of February 13, 1925, C. 229, Section 1, 43 Stat. 938; 28 U. S. C. A., Sec. 347 (a)

2. The decree of the United States Circuit Court of Appeals for the Second Circuit, called the mandate, sought to be reviewed, is dated July 16, 1941. Said decree affirms the order of the District Court in favor of the respondent here.

Statutes Involved.

The statutes involved are Section 1993, R. S. (8 U. S. C. A., Sec. 6), Section 17 of the Immigration Act of February 5th, 1917, C. 29, 39 Stat. 887 (8 U. S. C. A., Sec. 153), and Section 13 (c), Immigration Act of May 26, 1924, C. 190, 43 Stat. 161 (8 U. S. C. A., Sec. 213 (c), all of which, except Section 17, are set forth in full in the Appendix attached hereto.

Summary Statement of the Matter Involved.

The petitioner is the foreign born son of Ng Goot Foo, whose citizenship is conceded (fol. 123). Petitioner arrived at the Port of New York from China on October 6, 1939 (fol. 32). His case was heard by a Board of Special

Inquiry at Ellis Island, appointed under Section 17 of the Immigration Act of February 5th, 1917 (8 U. S. C. A., Sec. 153) (fols. 31-195). The Board determined that petitioner's claimed relationship "has not been reasonably established" and excluded him as "an alien ineligible to citizenship, not a member of any of the exempt classes, and inadmissible under Section 13 (c), Immigration Act of 1924" (fol. 134). An appeal to the Board of Review of the Department of Labor (now Department of Justice) was dismissed and the Secretary of Labor affirmed the order of exclusion (fols. 209-210). Petitioner's father then applied for a writ of habeas corpus (fols. 4-18) which was allowed by the District Court and a writ issued (fols. 19-21). A return to the writ was filed by the Immigration Department (fols. 22-30) and the matter was submitted to the District Court which rendered its written opinion dismissing the writ (fols. 212-225) and ordered petitioner remanded for deportation (fols. 226-230). An appeal was taken to the United States Circuit Court of Appeals for the Second Circuit, which affirmed the order of the District Court on July 16, 1941.

Petitioner's father was admitted to the United States as the foreign born son of a native citizen on November 22, 1921.

In order to establish his citizenship, petitioner was required to establish the alleged relationship to his father and also that he was born on or after the date when the father was admitted to the United States. (*Weedin* v. *Chin Bow*, 274 U. S. 657, 675.)

To support his claimed relationship, petitioner offered his own testimony (fols. 68-94), that of his alleged father (fols. 31-49; 95-104) and that of his alleged brother, Ng Fon Lem (fols. 50-66; 104-106), all of which was to the effect that petitioner was born on December 4th, 1921 (fols. 36, 54, 69), which was after the alleged father arrived in the United States. Petitioner was therefore, according to his claim, 18

years old less 6 days at the time he had his first hearing. The most searching examination failed to reveal any discrepancy in the record and this was conceded by the Department (fol. 199). Nevertheless petitioner was excluded on the ground that the Board believed him to be over 21 years of age. This belief is predicated on a suspicion implanted in the minds of the immigration authorities, by reason of a slight discrepancy involving the date of birth of the petitioner, during the examination of petitioner's brother for admission to the United States in 1936.

Summarizing the testimony in petitioner's brother's case (fols. 246-248), the Chairman of the Board indicated three years before petitioner came here that petitioner would be excluded if he ever applied for admission. The Chairman said:

> "While reflecting upon the credibility of the alleged father in this case, I do not deem that phase of the matter to be of sufficient gravity to militate against the present applicant, *and may properly be considered if and when Ng Fon Sing should ever attempt to apply for admission to this country.*" (Italics ours), (fol. 248)

Although petitioner's father explained the slight mistake and the reason for giving a wrong birth date for petitioner, and explained how it was physically impossible for petitioner to have been born only five and a half months after the marriage of petitioner's parents, the immigration authorities, while recognizing that there was no basis for exclusion on the ground of discrepancies, undertook to exclude petitioner because, as they put it, petitioner appeared to be older than he claimed to be.

Petitioner was subjected to an examination by a doctor of the United States Public Health Service who declared that he believed petitioner to be over 21 years, and "probably 22 to 25 years" of age (fol. 110). At a reopened hearing

petitioner submitted the testimony of Dr. Maurice M. Pomeranz, a noted authority on roentegenology and the subject of epiphyseal development, who testified to a careful, scientific analysis on epiphyseal development and demonstrated the impossibility of ascertaining age with accuracy from epiphyseal growth. He showed further that the growth of Chinese persons is very different from that of other ethnical groups of European-anthropological stock (fols. 156-158; 165). After carefully analyzing the X-rays taken of petitioner by the United States Public Health Service, Dr. Pomeranz produced X-ray films which he had taken of petitioner's brother, 15 years of age, and showed from these X-rays that identical parts of petitioner and his brother indicated that there was a variation of epiphyseal development in petitioner's family "tending towards acceleration of these centers" (fol. 177). Dr. Pomeranz therefore concluded that petitioner could be of the claimed age of 18 years (fol. 178).

The immigration authorities then recalled the United States Public Health Service doctor who did not contradict Dr. Pomeranz but merely stated that the testimony given by Dr. Pomeranz was similar to that given by him in ~~the~~ other cases (fol. 189). The immigration authorities promptly re-excluded petitioner.

Specification of Errors.

It is submitted that the conduct of the immigration authorities in injecting the "age" question into this case was primarily for the purpose of excluding petitioner in order to give force to a predisposition founded upon unsupported suspicion, and that petitioner was not afforded a fair hearing and that he never had a fair chance to get a fair hearing.

The District Court after observing the limited power of the court to review decisions of administrative bodies con-

tented itself with stating that *if a fair hearing had been accorded to petitioner and the decision reached was not wholly arbitrary, it was conclusive* (fols. 223-224), and thereupon, taking it for granted that a fair hearing had been given petitioner, felt constrained to sustain the administrative officials.

It is submitted that in the light of prevailing decisions of this Court, which petitioner sets forth in his accompanying brief, no consideration was given to the elements of unfairness and arbitrariness which prevailed either by the District Court or by the Circuit Court.

The United States Circuit Court of Appeals for the Second Circuit merely affirmed citing: *United States ex rel. Ng Kee Wong* v. *Corsi,* 65 F. (2d) 564 (C. C. A. 2) and *United States ex rel. Mark Guey Him* v. *Reimer,* 115 F. (2d) 241 (C. C. A. 2).

It is respectfully submitted that the Circuit Court of Appeals erred in ignoring petitioner's complaint of unfairness and gave credence to the simulated issue raised by the immigration authorities to the effect that petitioner was older than he claimed to be, without consideration of petitioner's plea that said feigned issue had been injected intentionally for the purpose of lending color to a pretended fair hearing and to support the exclusion order, notwithstanding that petitioner sustained the burden of proof resting upon him.

It is further submitted that the Circuit Court of Appeals erred in failing to recognize that the conduct of the immigration authorities constituted unfairness, arbitrariness and flagrant disregard of the uncontradicted credible testimony, scientific and otherwise, submitted by petitioner as to his relationship and age.

It is further respectfully submitted that the learned Circuit Court of Appeals rested its *Per Curiam* opinion upon

the cases of *Ng Kee Wong* v. *Corsi*, 65 F. (2d) 564 (C. C. A. 2) and *Mark Guey Him* v. *Reimer*, 115 F. (2d) 241 (C. C. A. 2), yet the test laid down by the *Ng Kee Wong* case was fully met by petitioner, for there was not the slightest evidence against paternity in the record.

Wherefore it is respectfully prayed that this petition for a writ of certiorari be granted.

ENG FON SING,
Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 704

UNITED STATES OF AMERICA, ex Rel. ENG FON SING,

Petitioner,

against

BYRON H. UHL, District Director of Immigration and Naturalization at the Port of New York, or any other person having the body of said Eng Fon Sing in custody.

BRIEF IN SUPPORT OF THE APPLICATION OF PETITIONER FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioner, on this application for a writ of certiorari, urges that the United States Circuit Court of Appeals for the Second Circuit erred in affirming an order of the District Court dismissing a writ of habeas corpus and remanding the petitioner to the District Director of Immi-

gration and Naturalization for deportation in the following respects, namely:

(a) The learned lower courts disregarded the clear and unequivocal evidence showing that petitioner was denied a fair hearing before the immigration authorities.

(b) The learned lower courts disregarded the overwhelming proof presented to it that the issue of petitioner's age was arbitrarily injected into the proceedings by the immigration authorities for the purpose of raising a simulated factual issue on which it based its improper order of exclusion, notwithstanding petitioner sustained the burden of proof resting on him by law.

(c) The learned lower courts disregarded the overwhelming, uncontroverted evidence proving petitioner's relationship.

These errors were, no doubt, committed in the mistaken belief that the courts were bound by the decisions of this Court limiting the scope of judicial review, even though the conduct complained of was manifestly unfair.

Completely ignoring the evidence indicating a manifest abuse and flagrant violation of petitioner's rights, the learned Circuit Court cited the case of *Ng Kee Wong* v. *Corsi*, 65 F. (2d) 564 (C. C. A. 2, 1933) as authority for its affirmation. In doing so it is respectfully submitted that the learned court failed to give any recognition to the test laid down by that court in that case, namely, the issue is not how the court "would have decided the question of paternity on the evidence presented, but whether the evidence *against paternity was so slight* as to make the board's decision wholly arbitrary, amounting to a denial of a fair hearing." (Italics ours.)

There is not the slightest scintilla of evidence *against paternity* in this record. On the contrary, the overwhelm-

ing, uncontradicted evidence establishes paternity. The immigration officials extended themselves to overcome this seemingly unanswerable fact and were ultimately constrained to advance two untenable speculations, neither of which denied paternity and both of which admitted it, namely: that the father made a mistake in giving the wrong marriage date or petitioner was conceived before marriage (fol. 205). Quite obviously both these guesses admitted paternity.

It is because of these facts that the immigration authorities were impelled to resort to the feigned "age" issue resulting in the finding that the petitioner is older than he claimed to be.

Petitioner fully recognizes the courts have "no power to interfere unless there was either denial of a fair hearing, or the finding was not supported by the evidence, or there was an application of an erroneous rule of law." (*Kumaki Kaga* v. *Berkshire*, 75 F. (2d) 820; *Tisi* v. *Tod*, 264 U. S. 131.)

He is not asking this Court to weigh the evidence which was presented before the immigration officials. But he does ask this Court to examine the conduct of the administrative officials in the light of this particular record, to see whether or not the decision of exclusion was not the result of unfairness and has not been due to an abuse of the power vested by statute in said officials.

Cases of unfairness have arisen not dissimilar to the acts of unfairness here complained of which have prompted this Court to say that there has been a flagrant violation of the rights of a son of a citizen of the United States seeking admission.

See:

Tisi v. *Tod*, 264 U. S. 131;

Gegiow v. *Uhl*, 239 U. S. 3;

Zakonaite v. *Wolf*, 226 U. S. 272, 274;

Tang Tun v. *Edsell*, 223 U. S. 673, 681, 682;
Chin Yow v. *U. S.*, 208 U. S. 8;
U. S. v. *Ju Toy*, 198 U. S. 253;
Kwock Jan Fat v. *White*, 253 U. S. 454;
U. S. ex rel. Bilokumsky v. *Tod*, 263 U. S. 149;
Ng Fung Ho v. *White*, 259 U. S. 276, 284.

If our courts are to shut their eyes to a palpable miscarriage of justice because they feel precluded by judicial precedent from interfering with an administrative body even though the factual issue before that body be a feigned one, intentionally created by it so as to give it immunity from such interference, then it is respectfully submitted there may never be a case where it will be possible to say that an unfair hearing was accorded one seeking admission into this country as the foreign born son of a citizen of the United States.

As was said by Mr. Justice Clarke of this Court, in *Kwock Jan Fat* v. *White*, 253 U. S. 454, at page 457:

> "It is fully settled that the decision of the Secretary of Labor, of such a question as we have here, is final, and conclusive upon the courts, unless it be shown that the proceedings were 'manifestly unfair', were 'such as to prevent a fair investigation', or show 'manifest abuse' of the discretion committed to the executive officers by the statute (citing) or that '*their authority was not fairly exercised*, that is, consistently with the fundamental principles of justice embraced within the conception of due process of law'. Tang Tun *v.* Edsell, Chinese Inspector, 223 U. S. 673, 681, 682. *The decision must be after a hearing* in good faith, however summary, Chin Yow *v.* U. S., 208 U. S. 8, 12, *and it must find adequate support in the evidence*, Zaconaite *v.* Wolf, 226 U. S. 272, 274."

So that the manifest error of the lower courts be corrected and a glaring instance of abuse on the part of the

immigration officials be undone, resulting in the denial to the petitioner of a most cherished right, it is respectfully prayed that the petition for writ of certiorari be granted.

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October 16, 1941.

APPENDIX.

R. S. 1993; Title 8, U. S. C. A., Sec. 6.

Children of Citizens born outside of United States. All children born out of the limits and jurisdiction of the United States, whose fathers may be at the time of their birth citizens of the United States, are declared to be citizens of the United States; but the right of citizenship shall not descend to children whose fathers never resided in the United States. All such children who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority. Duplicates of any evidence, registration, or other acts required by this section shall be filed with the Department of State for record.

Immigration Act of May 26, 1924, c. 190, Sec. 13, 43 Stat. 161, 8 U. S. C. A., Sec. 213 (c).

Aliens ineligible to citizenship. No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 204 of this title, or (2) is the wife, or the unmarried child under 18 years of age, or an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 203 of this title.

Immigration Act of February 5, 1917, c. 29, Sec. 17, 39 Stat. 887, 8 U. S. C. A., Sec. 153.

Boards of Special Inquiry; appointment. Boards of special inquiry shall be appointed by the commissioner of immigration or inspector in charge at the various ports of arrival as may be necessary for the prompt determination of all

cases of immigrants detained at such ports under the provisions of the law. * * * Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Secretary of Labor. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal through the commissioner of immigration at the port of arrival and the Commissioner General of Immigration to the Secretary of Labor, and the taking of such appeal shall operate to stay any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the commissioner of immigration at the port of arrival of such decision which shall be rendered solely upon the evidence adduced before the board of special inquiry. In every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Secretary of Labor. The decision of a board of special inquiry shall be based upon the certificate of the examining medical officer and, except as provided in section 158 of this title, shall be final as to the rejection of aliens affected with tuberculosis in any form or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under section 136 of this title.

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 704

UNITED STATES OF AMERICA EX REL. ENG FON SING, PETITIONER

v.

BYRON H. UHL, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION AT THE PORT OF NEW YORK, OR ANY OTHER PERSON HAVING THE BODY OF SAID ENG FON SING IN CUSTODY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the Circuit Court of Appeals (R. 90) is reported in 122 F. (2d) 552. The opinion of the District Court (R. 71–75) is reported in 40 F. Supp. 602.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 16, 1941 (R. 91). The petition for a writ of certiorari was filed October 16, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the action of the immigration authorities in considering the question of petitioner's age was so improper, or

the evidence was so insufficient to sustain the decision excluding him from admission to the United States, as to render the hearing unfair or the decision arbitrary.

STATUTE INVOLVED

Section 1993 of the Revised Statutes, as amended (8 U. S. C., sec. 6) provides:

> Any child hereafter born out of the limits and jurisdiction of the United States whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. * * *

STATEMENT

Petitioner arrived at the Port of New York from China on October 6, 1939 (R. 11), and applied for admission to the United States as a citizen under Section 1993 of the Revised Statutes. He claimed that he was the son of a foreign born citizen and was born after his father's entry into the United States (R. 11, 23, 25).

At a hearing before a Board of Special Inquiry on November 28, 1939, there was heard the testimony of petitioner, his father and a brother (R. 11–36). This testimony, which was substantially identical as to family relationship, was as follows:

Ng Goot Foo, the father, was married in China on May 2, 1921, to a Chinese woman (R. 12, 32). He left China for the United States in October 1921 (R. 13, 33), and was admitted at New York as the son of a citizen on November 22, 1921 (R. 12, 41). Petitioner was born in China on December 4, 1921 (which, of course, was after his father had entered the United States) (R. 12, 13, 18, 23, 25, 32). His age at the time of the hearing was, consequently, according to the testimony, 17 years, 11 months, and 24 days. No record of any kind to substantiate petitioner's birth date was produced, but

the father stated that he learned thereof in correspondence with his wife and also upon a subsequent visit to China (R. 13, 32–33, 34).

It was brought out at the hearing, however, that petitioner's father had testified in 1924, when he applied for a return certificate on a contemplated visit to China, that petitioner was born on October 16, 1921, when the father was in Hongkong en route to the United States, and that no children had been born since the father's admission to the United States in 1921 (R. 33, 83–84). In this state of the record the Board of Special Inquiry deferred action pending investigation (R. 36).

On December 4, 1939, the United States Public Health Service advised the Commissioner of Immigration by letter that petitioner had been examined to determine his age and that it was the opinion of the Service doctors that petitioner was over 21 years of age, and probably 22 to 25 years of age (R. 37).

The hearing was reconvened on January 4, 1940 (R. 38), at which time Dr. J. J. Griffitts of the Public Health Service testified that he had physically examined the petitioner and that on the basis of that examination, supported by a dental examination and an X-ray examination of petitioner's epiphyseal development, the opinion of those who examined petitioner was that he was over 21 years of age, probably between 22 and 25 (R. 39–40). Thus, according to Dr. Griffitts' testimony, petitioner was born in 1919 at the latest, at least two years before his alleged father established his residence in the United States.

At the conclusion of this hearing the Board of Special Inquiry excluded petitioner because it was not satisfied as to his citizenship (R. 41–46). The Board's decision was based upon the contradictory testimony of petitioner's father in 1924 that petitioner was born on October 16, 1921, prior to the father's entry into this country; upon the testimony of Dr. Griffitts that petitioner was over 21 years of age; and upon the expert opinions of two members of the Board, predicated upon years of experience as members of Boards of Special Inquiry in the Chinese

Division, during which time they had observed numerous Chinese applicants for admission coming from the same district of China as the petitioner, that petitioner was more than 18 years old, the age he claimed to be.[1]

The hearing was reopened on January 25, 1940, to receive the testimony of Dr. Maurice M. Pomeranz, an expert witness called on behalf of petitioner (R. 47). Dr. Pomeranz testified generally that epiphyseal development is not an accurate indicator of a person's age and that such development varies between different races and is influenced by nutrition, disease, heredity and environmental conditions (R. 47–49, 55–57). He also testified that height, weight and other physical characteristics are not reliable criteria of age (R. 49–55). Referring to the X-ray films of petitioner taken by the Public Health Service doctors, Dr. Pomeranz testified that it was impossible to place within a range of two or three years the epiphyseal development of petitioner and thus deduce his age (R. 55–57). He also stated that X-ray films of petitioner's alleged brother showed epiphyseal development beyond his actual age (R. 58–59). In summary, Dr. Pomeranz stated that in his opinion "this applicant could be the age claimed, namely, 18 years" (R. 59).

On February 13, 1940, Dr. Griffitts was recalled to testify concerning Dr. Pomeranz' X-ray films of petitioner's alleged brother and Dr. Pomeranz' testimony on January 25. Dr. Griffitts reiterated his opinion that petitioner was over 21 years of age (R. 63). He stated that Dr. Pomeranz' testimony dealt in generalities and that abnormal conditions affecting the factors entering into age determination, which were referred to by Dr. Pomeranz, were not found to exist in petitioner. In respect of the X-ray films of petitioner's alleged brother, Dr.

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[1] Petitioner's alleged father and brother each stated petitioner's age to be 19 (R. 11, 12, 18, 23), but this appears to have been based on Chinese reckoning of age, under which a chid is one year old at birth and his birthdays occur thereafter on Chinese New Years in January or February of each year.

Griffitts testified that a variation in the epiphyseal development of two of the brother's joints did not occur in petitioner (R. 63–64).

At the conclusion of the reopened hearing, the Board of Special Inquiry reaffirmed its earlier ruling excluding petitioner (R. 64–65). The Board of Review, on appeal, examined the evidence and affirmed the decision of the Board of Special Inquiry (R. 66–70).

Petitioner's father then filed a petition for a writ of habeas corpus on petitioner's behalf in the District Court for the Southern District of New York (R. 2–6). The writ issued (R. 7) and a return, which incorporated the record of the hearings before the Board of Special Inquiry (R. 9), was filed on behalf of the respondent (R. 8–10). The District Court, after a hearing, held that petitioner received a fair trial and that the decision of the immigration authorities on the issue of petitioner's age was not arbitrary and therefore must be sustained (R. 71–75). The court accordingly dismissed the writ and remanded petitioner to the custody of the immigration authorities (R. 76–77). The Circuit Court of Appeals, in a *per curiam* decision, unanimously affirmed the order of the District Court (R. 90).

ARGUMENT

Petitioner contends that he was denied a fair hearing before the immigration authorities, because (1) the question of his age was a feigned issue intentionally injected into the proceeding for the purpose of lending color to a pretended fair hearing and to support the exclusion order (Pet. 5–6), and (2) "the conduct of the immigration authorities constituted unfairness, arbitrariness and flagrant disregard of the uncontradicted credible testimony, scientific and otherwise, submitted by petitioner as to his relationship and age" (Pet. 6). These contentions find no support in the record and hence do not merit review by this Court.

1. Petitioner sought admission to the United States as a citizen under Section 1993 of the Revised Statutes (*supra*,

p. 2), claiming that he was the son of a foreign born citizen and that he was born after his father had established residence in this country. These were questions which the immigration authorities had power to determine and the burden was upon the petitioner to satisfy them of his citizenship. *Ng Fung Ho* v. *White*, 259 U. S. 276, 282; *Quon Quon Poy* v. *Johnson*, 273 U. S. 352, 358; *Gee Nee Way* v. *McGrath*, 111 F. (2d) 326, 327 C. C. A. 9; *Wong Tin* v. *Ward*, 102 F. (2d) 146 (C. C. A. 1). Since petitioner's claim of citizenship was based upon his birth having occurred within only two weeks after his father entered this country,[2] since petitioner appeared to members of the Board of Special Inquiry to be older than he asserted (R. 40–41, 44, 45), and since his father had made inconsistent statements as to petitioner's birth date, his age was patently a crucial issue under the statute, which it was the duty of the immigration authorities to resolve. Consequently, arbitrary action cannot be ascribed to them in passing upon the petitioner's age.

2. There was evidence before the immigration authorities contradicting that adduced by petitioner with reference to his age. It had been held in a number of cases, in one of which this Court recently denied a petition for a writ of certiorari, that the immigration officials are entitled to base exclusion upon evidence similar to that upon which they rested their order in the instant case; that such evidence is sufficiently substantial to foreclose any contention that the exclusion decision is arbitrary and unfair. *Mark Guey Him* v. *Reimer*, 115 F. (2d) 241 (C. C. A. 2); *Kong Din Quong* v. *Haff*, 112 F. (2d) 96 (C. C. A. 9), certiorari denied, 311 U. S. 706; *Hom Ark* v. *Carr*, 105 F. (2d) 607 (C. C. A. 9); *Fong On* v. *Day*, 54 F. (2d) 990 (C. C. A. 2); *Weedin* v. *Yeung Bon Lip*, 43 F. (2d) 465 (C. C. A. 9); *Lew Git Cheung* v. *Nagle*, 36 F. (2d) 452 (C. C. A. 9); *Fong Lim* v. *Nagle*, 2 F. (2d) 971 (C. C. A. 9).

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[2] His father was admitted to the United States on November 22, 1921. Petitioner claims to have been born on December 4, 1921.

CONCLUSION

The case was correctly decided below, and there is involved no conflict of decisions or any important question of federal law. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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END OF A CASE